

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HECTOR RODRIGUEZ,

Petitioner,

MEMORANDUM AND ORDER

-against-

10-CV-3360 (ARR)

JOHN LEMPKE,

NOT FOR PRINT OR
ELECTRONIC PUBLICATION

Respondent.

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ROSS, United States District Judge:

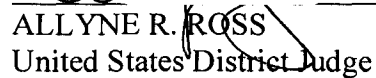
Petitioner Hector Rodriguez brought this *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court initially directed the respondent to respond to the petition by Order dated July 29, 2010. However, petitioner had previously filed a prior petition pursuant to 28 U.S.C. § 2254 challenging the same conviction. The Court's Order to Show Cause entered on July 29, 2010 was subsequently vacated. The Court finds that it cannot consider the instant petition and hereby transfers it to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631.

On February 24, 1999, petitioner was convicted in New York Supreme Court, Kings County, of several counts, including attempted murder in the second degree, kidnapping, robbery, and criminal possession of a weapon and stolen property. He was sentenced to an indeterminate term of 17 years to life imprisonment. Petitioner has previously challenged this conviction in a prior petition to the United States District Court for the Eastern District of New York. See Rodriguez v. Miller, No. 02 CV 2279 (ARR) (E.D.N.Y. March 24, 2003) (petition denied), appeal dismissed, No. 03-2299 (2d Cir. Feb. 13, 2004). The Antiterrorism and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to

authorize successive habeas motions or applications.” Torres v. Senkowski, 316 F.3d 147, 151 (2d Cir. 2003). Therefore, petitioner must move in the Second Circuit for permission to pursue this successive petition for habeas corpus relief. 28 U.S.C. § 2244(b)(3)(A).

Accordingly, in the interest of justice, the Clerk of Court shall transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. See Torres, 316 F.3d at 151-52 (citing Liriano v. United States, 95 F.3d 119 (2d Cir. 1996) (*per curiam*)). This order closes this case. If the Second Circuit authorizes petitioner to proceed in this matter, petitioner shall move to reopen under this docket number.

SO ORDERED.


ALLYNE R. ROSS
United States District Judge

Dated: Brooklyn, New York
August 2, 2010

Service List:

Petitioner (pro se):

Hector Rodriquez

99A2267

Five Points Correctional Facility

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